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*Ford Motor Company*

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James P. Vondale, Director  
Automotive Safety Office  
Environmental & Safety Engineering

February 18, 2002

Jeffrey W. Runge, M.D.  
Administrator  
National Highway Traffic  
Safety Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Re: Notice of Proposed Rulemaking – 49 CFR Part 573 – Disposition of Recalled Tires  
(Docket No. NHTSA-2001-10856; 66 Fed. Reg. 65165 December 18, 2001)

Dear Dr. Runge:

Ford Motor Company, a domestic manufacturer and importer of motor vehicles with offices at One American Road, Dearborn, Michigan 48126-2798, submits the following comments on the Notice of Proposed Rulemaking regarding "Disposition of Recalled Tires" to implement Section 7 of the Transportation Recall Enhancement, Accountability and Documentation Act (TREAD Act). This response covers all brands encompassed by Ford Motor Company (Ford, Lincoln, Mercury, Mazda, Volvo, Jaguar, Land Rover, Aston Martin, and Th!nk).

Ford Motor Company supports the intent of Section 7 of the TREAD Act. That Section requires a manufacturer's remedy program for the replacement of defective or noncompliant tires to include measures to prevent, to the extent reasonably within the manufacturer's control, the replaced tires from being resold for installation on a motor vehicle. It also requires manufacturers to limit, to the extent reasonably within the manufacturer's control, the disposal of replaced tires in landfills. Ford took extraordinary actions to address this issue when it conducted Owner Notification Program 01B77 – Ford Firestone Wilderness AT Program (ONP 01B77). Ford Motor Company's comments to this Notice of Proposed Rulemaking (NPRM) are based on the experience we gained in conducting this extensive ONP.

#### **Vehicle Manufacturer – Authorized Service Outlet Relationships**

Ford Motor Company has a different relationship with its dealers than tire manufacturers have with their dealers. As a vehicle manufacturer and importer, Ford Motor Company is prohibited in 39 states from owning dealerships. The manufacturer-dealer relationship is governed both by a dealer Sales and Service Agreement and by an extensive body of State Franchise Laws. Tire manufacturers, on the other hand, frequently own up to 40% of their sales and service outlets.

In the case of ONP 01B77, Ford Motor Company worked directly with tire manufacturers to provide additional service outlets for the program. The tire manufacturers communicated with



their authorized service outlets. There has been no direct relationship or contact between Ford Motor Company and the tire manufacturers' authorized service outlets. In fact, Ford Motor Company does not have specific information regarding the location and ownership of these outlets. Therefore, any obligation under the rules to provide guidance or other information to outlets authorized to replace tires should be limited to those outlets with which the manufacturer has a direct relationship.

All U.S. Ford Motor Company dealers, as a matter of practice, are independently owned and operated. For example, the terms of the Ford Sales and Service Agreement make it clear that dealers are not agents of Ford. Paragraph 14 of the Ford standard dealer agreement provides that "This agreement does not in any way create the relationship of principal and agent between the Ford Motor Company and the dealer and under no circumstances shall the dealer be considered to be an agent of the Ford Motor Company....."

Thus, under the terms of the Ford Sales and Service Agreement, Ford does not have control over dealership operations. To the extent that Ford "requires" dealers to perform any duties with regard to warranty or safety recalls we are obligated both by the Agreement and by applicable state and federal laws and regulations to provide reasonable compensation. And, in agreeing to compensate dealers for work performed we gain some limited control over how such work is performed (i.e. if the work is not performed as specified we do not pay the dealer). By way of example, paragraph 4 (b) of the Sales and Service Agreement requires the dealer to perform all campaign inspections and/or service "...subject to campaign instructions issued by the Company" and paragraph 4(b) (4) imposes the corresponding obligation for Ford to reimburse the dealer for the work required.

In a recall campaign initiated by a tire manufacturer, Ford Motor Company dealers, to the extent that they undertake tire replacements, are operating as representatives of the tire manufacturer. In some cases, Ford Motor Company may instruct dealers to follow the tire manufacturer's instructions. In other cases the dealers may have an independent relationship with the tire manufacturer and be notified directly.

Thus, Ford Motor Company, as a result of the fundamental structure of our relationship with dealers for the various brands as governed by their Sales and Service Agreements and state franchise laws, does not have the level of control contemplated by portions of the proposed section 573.5(c) (9) and would be exempt from the requirements proposed as 573.5 (c) (9) (iii) (B) (1), (B) (3), (C) (1) and (C) (3). They would be covered by the "written guidance" requirements for "other outlets" of 573.5 (c) (9) (iii) (B) (2) and (C) (2). Ford Motor Company urges the agency to explicitly recognize in the Final Rule that independently owned dealers are not considered "manufacturer controlled" for the purpose of these requirements.

### **Burden of Notification on Environmental Requirements**

The agency requests comments regarding its proposal to require manufacturers to provide outlets with information that summarizes local disposal laws. As previously noted, dealerships are independent businesses. They are obligated to know and conform to federal and state requirements as well as the comprehensive waste disposal plans of their local jurisdictions. Many of the approximately 5000 Ford dealers currently sell and install new tires. Also, there are many thousands of tire dealers that are either independent or affiliated with tire manufacturers. Tire dealers currently replace over 250 million tires (EPA/530-SW-90-074B) per year. Tires replaced pursuant to campaigns are a very small fraction of the tires replaced each year. Local

tire replacement businesses currently must dispose of the millions of replaced tires, and they must adhere to local and state laws and regulations. Requiring vehicle manufacturers to provide information to a small number of all tire dealers that summarizes local laws and regulations is both an unreasonable and unnecessary burden. The local requirements are extensive and complex. For example, there are approximately 2314 landfills in the US (1998 EPA study). Each landfill potentially has unique requirements that are reflected in the comprehensive waste disposal plans in the local community in which they reside. In addition to landfills, there are incinerators, recycling facilities, transfer stations, and means of handling waste all of which are factored into the individual local communities comprehensive plans for processing solid waste.

The quantity of tires at issue in ONP 01B77 was unique in scale. A vehicle manufacturer would not ordinarily need to develop a nationwide collection system and would be more likely to rely on the local disposal resources that are in place and capable of handling a typical campaign. In conducting our recent replacement program, Ford Motor Company advised dealers about the advantages both to them and to society that our disposal plan provided. Ford Motor Company went to extraordinary lengths to set in place a network to aid in the disposition of these tires due in part to the magnitude of the program. Ford Motor Company wanted to be sure that the tires were recycled even though recycling is just one way to comply with local requirements.

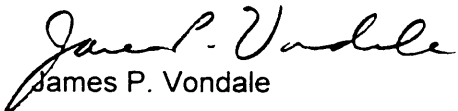
Ford Motor Company urges the agency to publish a Final Rule that requires vehicle manufacturers to advise their dealers of their obligation to follow all applicable state and local disposal requirements. It is inappropriate and not feasible to require vehicle manufacturers to provide legal advice to each of their dealers regarding the details of state and local tire disposal requirements. Each dealer's legal counsel should handle this function that requires a unique knowledge of state and local laws and regulations.

#### **Specification of Time Period for Tire Impairment**

The NPRM proposes to add section 573.5 (c) (9) (iii) (B) that would specify the time period to render tires unusable after removal from the vehicle. Ford Motor Company agrees that preventing the inadvertent reuse of tires that are subject to a campaign is important. In communications to its affected dealers regarding ONP 01B77, Ford Motor Company requested that dealers render tires unusable as they were removed from the vehicle.

Should you have questions regarding these comments or require additional information, please contact my office on (313) 845-4320.

Sincerely,

  
James P. Vondale